

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN LESTER COX,

Plaintiff,

v.

MIRA NARKIEWICZ, *et al.*,

Defendants.

CASE NO. C19-1486-JCC

ORDER

This matter comes before the Court on Plaintiff John Lester Cox’s motion for a second extension of time to object to Magistrate Judge Peterson’s Report and Recommendation, motion to appoint counsel, and motion requesting that the Court order Stafford Creek Correctional Facility to provide him with a personal copy of the Federal Rules of Civil Procedure (Dkt. No. 35). Having thoroughly considered the parties’ briefing and the relevant record, the Court hereby GRANTS Plaintiff’s motion for an extension of time and DENIES Plaintiff’s motions to appoint counsel and for a personal copy of the Federal Rules.

On November 10, 2020 Magistrate Judge Peterson filed a Report and Recommendation (“R&R”) recommending that the Court dismiss Mr. Cox’s First Amendment and Eighth Amendment claims with prejudice. (*See* Dkt. No. 29.) Magistrate Judge Peterson set the deadline for Mr. Cox to object for twenty-one days after the R&R was filed. (*See id.* at 22.) Accordingly, Mr. Cox’s deadline to object was December 1, 2020.

1 Before that deadline expired, Mr. Cox moved for an extension because he learned after
 2 the R&R was filed that he had a mass on his thyroid that needed to be biopsied. (*See* Dkt. No. 30
 3 at 1, 4–5.) The Court granted Mr. Cox’s motion in part, extending the deadline to object to the
 4 R&R until January 5, 2021. (*See* Dkt. No. 34.)

5 Over the past several months, the Stafford Creek Corrections Center, where Mr. Cox is
 6 incarcerated, imposed several measures to combat the spread of COVID-19. (*See* Dkt. No. 35 at
 7 1–3.) As a result, Mr. Cox was not allowed to access his writing materials for several weeks and
 8 did not receive notice of the Court’s order extending his deadline to object to the R&R until
 9 January 6, 2021, after the deadline had already passed. (*Id.* at 3–4.) Mr. Cox now seeks another
 10 30-day extension of his deadline to object to the R&R. (*Id.* at 4.) Defendants do not object. (Dkt.
 11 No. 36 at 1.) Having thoroughly reviewed the record, the Court finds good cause to extend the
 12 deadline by 30 days.¹

13 Mr. Cox also requests that the Court appoint counsel and order Stafford Creek to provide
 14 him with a personal copy of the Federal Rules of Civil Procedure. (Dkt. No. 35 at 4.)

15 The appointment of counsel for a *pro se* litigant in a civil case “is a privilege and not a
 16 right.” *United States ex rel. Gardner v. Madden*, 352 F.2d 792, 793 (9th Cir. 1965). A court may
 17 appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) but should do so
 18 “only in exceptional circumstances.” *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984).
 19 When determining whether exceptional circumstances justify the appointment of counsel, the
 20 Court considers “the likelihood of success on the merits and the ability of the petitioner to
 21 articulate his claims *pro se* in light of the complexity of the legal issues involved.” *Wilborn v.*
 22 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting *Weygandt v. Look*, 718 F.2d 952, 954
 23 (9th Cir. 1983)). Having considered those factors, the Court concludes that this case does not
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25 ¹ Because Mr. Cox’s inability to object by the deadline was caused almost entirely by events
 26 outside of his control, the Court also finds that Mr. Cox has demonstrated “excusable neglect.”
 Fed. R. Civ. P. 6(b)(1)(B).

1 present exceptional circumstances justifying appointment of counsel.

2 Based on the present record, the Court also DENIES Plaintiff's motion for a copy of the
3 Federal Rules of Civil Procedure. Mr. Cox has not shown that he is unable to access the Federal
4 Rules through the Stafford Creek Law Library. Therefore, the Court DENIES this motion.

5 In sum, the Court GRANTS Plaintiff's motion for an extension of time to object to the
6 R&R, DENIES Plaintiff's motion for appointment of counsel, and DENIES Plaintiff's motion
7 requesting that the Court order Stafford Creek to provide him with a personal copy of the Federal
8 Rules of Civil Procedure. Plaintiff's new deadline to object to the R&R is Thursday, February 4,
9 2021.

10 DATED this 28th day of January 2021.

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14 John C. Coughenour
15 UNITED STATES DISTRICT JUDGE
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